

SUBCHAPTER L : OVERPAYMENT PREVENTION

§334.530. Purpose and Applicability of the Subchapter.

(a) Purpose. The purpose of this subchapter is to establish procedures regarding the audit of money expended from the Petroleum Storage Tank Remediation Fund, to assure the most efficient use of the money available and to provide the most effective protection to the environment, public health and safety.

(b) Applicability. This subchapter applies to all corrective actions, paid for in whole or in part by the Petroleum Storage Tank Remediation Fund.

§334.531. Responsibility of Recipients of Money from the PSTR Fund and Persons Paid by Recipients of Money from the Petroleum Storage Tank Remediation Fund.

(a) The recipient of reimbursement shall cooperate fully with any audit or investigation by the executive director regarding the necessity of work performed and/or the costs charged and amounts paid.

(b) Each person who performs work at a leaking petroleum storage tank site, who is paid by a person who anticipates being, or actually is, reimbursed from the Petroleum Storage Tank Remediation Fund, shall cooperate fully with any audit or investigation by the executive director regarding the work performed and/or the costs charged.

(c) No person shall knowingly submit false information to the executive director as part of any materials required to be submitted under this subchapter.

§334.532. Payments.

(a) Payment by the executive director of a claim for money from the PSTR Fund means that the claim is subject to post-payment audit.

(b) By making payment of claims to eligible persons (see §334.310 of this title (relating to Requirements for Eligibility - Interim Period)), the executive director makes no statement or admission that the payments are for necessary, reimbursable, or allowable costs, as those terms are defined by this chapter, nor that the corrective action taken was not in excess of Texas Natural Resource Conservation Commission clean-up standards for effective protection of the environment, public health and safety.

§334.533. Audits.

The executive director's staff shall audit a claim for payment as required by this section. Audits will be conducted in accordance with generally accepted auditing standards. Audits will be based on

TNRCC cleanup standards and policies, procedures, guidelines, and rules in effect at the time the work was performed. An audit can also be conducted in a case of suspected fraud. For work conducted from the inception of the program until June 7, 1993, the commission will audit to ensure that only reasonable and allowable costs have been paid from the PSTR Fund. For work conducted after June 7, 1993, the commission will audit to ensure that only reimbursable and allowable costs have been paid from the PSTR Fund. Such audits may occur prior to or after claims have been paid. Such audits shall include at a minimum an investigation into whether activities performed and/or the amounts claimed were:

- (1) allowable;
- (2) technically necessary;
- (3) cost effective; and

(4) reimbursable, (for work performed on or after June 7, 1993), or reasonable (for work performed prior to June 7, 1993) as those terms are defined by this chapter.

Adopted October 11, 1995

Effective November 8, 1995

§334.534. Notice of Overpayment.

(a) If the executive director conducts an audit or investigation and concludes that reimbursement of a claim was for an amount which exceeded the necessary, allowable, or reimbursable cost of corrective action, the executive director shall prepare a notice of overpayment. The notice of overpayment shall briefly summarize the findings of the executive director and identify the amounts which were overpaid.

(b) The notice of overpayment will be delivered to the person who received money from the PSTR Fund or to persons who were paid by the person who received money from the PSTR fund.

(c) Upon receipt of a notice of overpayment, the recipient shall submit a check returning the amount of overpayment to the Texas Natural Resource Conservation Commission.

(d) All checks rendered to return overpayments shall be made out to "The State of Texas - Petroleum Storage Tank Remediation Fund," and mailed to the Director of the Administrative Audits and Financial Assurance Division, Audits and Program Coordination Section, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087 with the notation "LPST # _____, Application # _____, overpayment return."

(e) In cases where the executive director demonstrates fraud on the PSTR Fund, the recipient of a notice of overpayment may also be required to pay interest, calculated at New York Prime, plus two points, dating from the date of overpayment by the Texas Natural Resource Conservation

Commission (or predecessor agency), to the date of repayment to the Texas Natural Resource Conservation Commission.

§334.535. Objections to the Notice of Overpayment and Formal Petition for Hearing.

(a) If the party receiving the notice of overpayment disputes any portion of the amount to be repaid to the commission, he or she must, within 30 days of receipt of the notice of overpayment, file a petition for hearing with the chief clerk in the manner prescribed generally by this title for filing petitions with the commission and shall serve a copy of the petition on the executive director.

(b) The petition shall assert which funds the party is entitled to retain, and why such funds represent claims for allowable, necessary, cost-effective, and/or reimbursable amounts or activities.

(c) If a person does not object to a notice of overpayment, in whole or in part, as prescribed by this section, then all objections to the notice are waived.

(d) Any amount not specifically disputed in accordance with this section must be returned within 30 days of receipt of the notice of overpayment.

§334.536. Hearing by the Commission.

Following receipt of a petition, the commission shall conduct a hearing on the petition. The proceedings shall be governed by the rules of the commission.

§334.537. Failure to Return Overpayment or Cooperate with Audit or Investigation.

(a) If the overpayment has not been returned to the commission, or objected to by the recipient, in accordance with the requirements of this subchapter, the executive director shall file a petition seeking an order from the commission to compel payment.

(b) All commission orders issued pursuant to this subchapter shall be enforceable in the same manner as any order issued pursuant to the Texas Water Code, Chapter 26, including administrative penalties of up to \$10,000 per day of violation.

(c) The executive director may seek an order from the commission to compel cooperation with an audit or investigation at any time.

§334.538. Administrative Penalties and Other Actions.

Nothing in this subchapter precludes the commission from issuing orders, assessing administrative penalties, or taking any other action permitted by law against any person for violation of the Texas Water Code, commission rules, or orders of the commission.

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